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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

In re: Stephen J.R. Goetz and Diana
Goetz,

Debtors.

John Challas,

Plaintiff,

v.

Steven Goetz, and DOES 1 through 20,
Inclusive,

Defendants.

Chapter 11

Case No. C-07-06364 RMW

[Bankruptcy Case No. 05-57623 MM;
Adversary Proceeding No. 06-5197;
BAP No. NC-07-1418.]

**DECLARATION OF DANIEL D. MCGEE IN
SUPPORT OF APPELLEE/PLAINTIFF JOHN
CHALLAS' MOTION TO DISMISS THE APPEAL BY
APPELLANT/DEFENDANT STEPHEN GOETZ**

Date: June 20, 2008

Time: 9:00 a.m.

Judge: Hon. Ronald M. Whyte

Courtroom: 6, 4th Fl.

I, Daniel D. McGee, declare:

1. I am an attorney licensed to practice law in the state of California and am admitted in this Court. I am also an associate of Ellis Coleman Poirier La Voie & Steinheimer, LLP, co-counsel of

1 record for Appellee/Plaintiff John Challas ("Mr. Challas") herein. I am making this declaration in
2 support of Mr. Challas' motion to dismiss the appeal brought by Appellant/Defendant Stephen Goetz.
3 The matters stated herein are within my own personal knowledge, and if called to testify thereto, I
4 would competently do so.

5 2. On October 19, 2007, and following a day-long evidentiary hearing which occurred on
6 July 13, 2007, the Bankruptcy Court for the Northern District of California, the Honorable Marilyn
7 Morgan presiding, signed an Order ruling that Mr. Challas' cause of action for slander against Goetz
8 was not within the parties' "fair contemplation" when Goetz filed for Chapter 11 bankruptcy, and
9 therefore not discharged upon confirmation of Goetz's bankruptcy reorganization plan. Said Order
10 was entered on the Bankruptcy Court's docket on October 22, 2008. A true and correct copy of said
11 order, of which this Court is requested to take judicial notice pursuant to **FRE, Rule 201**, is attached
12 hereto as **Exhibit 1**.

13 3. On November 1, 2007, Goetz, who is proceeding in pro per, appealed the October 19,
14 2007 Order. A true and correct copy of Goetz's notice of appeal, of which this Court is requested to
15 take judicial notice pursuant to **FRE, Rule 201**, is attached hereto as **Exhibit 2**.

16 4. On November 1, 2007, Goetz, pursuant to **FRBP 8006**, also designated the entire
17 docket for the underlying adversary proceeding to be included in the record on appeal, including the
18 transcripts for hearings dated June 12 and July 13, 2007. In so doing, Goetz, pursuant to **FRBP 8006**,
19 was required to immediately deliver to the reporter and file with the clerk a written request for the
20 transcripts and make satisfactory arrangements for payment of its costs. Goetz failed to perform these
21 acts and has not taken any steps to cure the same. A true and correct copy of Goetz's statement of
22 issues and designation of record, of which this Court is requested to take judicial notice pursuant to
23 **FRE, Rule 201**, is attached hereto as **Exhibit 3**.

24 5. On November 6, 2007, the Bankruptcy Court referred Goetz's appeal to the Bankruptcy
25 Appellate Panel ("BAP"). A true and correct copy of said referral, of which this Court is requested to
26 take judicial notice pursuant to **FRE, Rule 201**, is attached hereto as **Exhibit 4**. On November 13,
27 2007, the BAP transmitted to the parties its opening letter which indicated that Goetz had failed to

1 transmit a copy of the order from which Goetz is appealing. A true and correct copy of the BAP's
2 opening letter, of which this Court is requested to take judicial notice pursuant to **FRE, Rule 201**, is
3 attached hereto as **Exhibit 5**.

4 6. On November 26, 2007, Mr. Challas filed an objection to Goetz's appeal being heard
5 and determined by the BAP. A true and correct copy of Mr. Challas' objection, of which this Court is
6 requested to take judicial notice pursuant to **FRE, Rule 201**, is attached hereto as **Exhibit 6**. The
7 appeal was thereafter transferred to this Court and assigned to the Honorable Ronald M. Whyte.

8 7. On December 17, 2007, this Court set this appeal for an April 18, 2008 status
9 conference pending the parties' perfection of the record on appeal. Upon the filing of the record on
10 appeal, this Court was to vacate the April 18, 2008 status conference at which time a briefing schedule
11 would issue. A true and correct copy of this Court's notice of setting of status conference, of which
12 this Court is requested to take judicial notice pursuant to **FRE, Rule 201**, is attached hereto as **Exhibit**
13 **7**.

14 8. On January 10, 2008, Mr. Challas filed a case management conference ("CMC")
15 statement in the Bankruptcy Court in connection with a CMC which was set to occur on January 15,
16 2008. Mr. Challas' CMC statement recited the aforementioned facts, including that Goetz had failed to
17 comply with **FRBP 8006** or to otherwise perfect his appeal rendering his appeal subject to dismissal.
18 Mr. Challas also indicated that this Court had set the appeal for an April 18, 2008 status conference. A
19 true and correct copy of Mr. Challas' January 10, 2008 CMC statement, of which this Court is
20 requested to take judicial notice pursuant to **FRE, Rule 201**, is attached hereto as **Exhibit 8**.

21 9. Goetz failed to file any CMC statement in connection with the January 15, 2008 CMC.
22 Ultimately, Judge Morgan continued the Bankruptcy Court's CMC until December 9, 2008 pending
23 the outcome of Goetz's appeal before this Court.

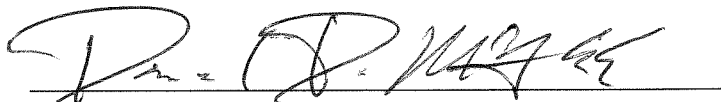
24 10. On April 3, 2008, Mr. Challas filed his status conference statement in connection with
25 this Court's April 18, 2008 status conference. That status conference statement again indicated that
26 Goetz had failed to perfect his appeal, and that dismissal of Goetz's appeal was warranted. Goetz did
27 not file any status conference statement in connection with the April 18, 2008 status conference. A
28

1 true and correct copy of Mr. Challas' April 3, 2008 status conference statement, of which this Court is
2 requested to take judicial notice pursuant to **FRE, Rule 201**, is attached hereto as **Exhibit 9**.

3 11. On April 18, 2008, Mr. Challas' attorneys appeared before this Court at the April 18,
4 2008 status conference. Once again, Goetz failed to appear at the April 18, 2008 status conference.
5 Given these circumstances, including Goetz's failure to perfect his appeal, Mr. Challas' attorneys
6 advised this Court that they would be bringing the instant motion to dismiss, which this Court
7 recognized. A true and correct copy of this Court's civil minutes dated April 18, 2008, of which this
8 Court is requested to take judicial notice pursuant to **FRE, Rule 201**, is attached hereto as **Exhibit 10**.

9 12. Mr. Challas is concerned that Goetz may be secreting assets during this period of
10 avoidance and delay. These concerns are not unfounded. Even Goetz's own family successfully sued
11 Goetz in state court for the fraud Goetz had allegedly perpetrated against his own parents as evidenced
12 by the complaint for determination of dischargeability of debt, which the trustees of the Goetz
13 Revocable Trust brought against Goetz in the Bankruptcy Court. A true and correct copy of said
14 complaint, of which this Court is requested to take judicial notice pursuant to **FRE, Rule 201**, is
15 attached hereto as **Exhibit 11**.

16
17 I declare under the penalty of perjury under the laws of the state of California that the foregoing
18 is true and correct and that this declaration was executed on May 13, 2008, in Sacramento, California.

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21 DANIEL D. MCGEE
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CERTIFICATE OF SERVICE

I, Nichole M. Pruitt, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 555 University Avenue, Suite 200 East, Sacramento, CA 95825.

On May 13, 2008, I served the following document(s) on the parties in the within action:

DECLARATION OF DANIEL D. MCGEE IN SUPPORT OF APPELLEE/PLAINTIFF JOHN CHALLAS' MOTION TO DISMISS THE APPEAL BY APPELLANT/DEFENDANT STEPHEN GOETZ

X	VIA OVERNIGHT SERVICE: The above-described document(s) will be delivered by overnight service, to the following:
X	VIA ELECTRONIC SERVICE: The above-described document(s) will be delivered electronically through the Court's ECF/PACER electronic filing system, as stipulated by all parties to constitute personal service, to the following:

Stephen Goetz
13725 Robleda Road
Los Altos, CA 94022
(Via Overnight Service)

Debtor In Pro Per

George P. Eshoo, Esq.
Law Offices of George P. Eshoo et al.
702 Marshall Street, Suite 500
Redwood City, CA 94063
(Via Electronic Service)

Co-Counsel for John Challas

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on May 13, 2008.

By Nichole M. Pruitt
Nichole M. Pruitt

EXHIBIT 1

October 22, 2007
 GLORIA L. FRANKLIN, CLERK
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA



NOT INTENDED FOR PUBLICATION

The following constitutes
 the order of the court. Signed October 19, 2007

Marilyn Morgan
 Marilyn Morgan
 U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF CALIFORNIA

In re STEPHEN J.R. GOETZ and DIANA
 GOETZ,

Debtors.

Case No. 05-57623-MM

Chapter 11

JOHN CHALLAS,

Plaintiff,

vs.

STEVEN GOETZ and Does 1 through 20
 inclusive,

Defendants.

Adversary No. 06-5197

MEMORANDUM DECISION FOLLOWING EVIDENTIARY HEARING

INTRODUCTION

John Challas alleges that the debtor, Stephen Goetz, slanderously told other people that Challas had admitted to a variety of criminal conduct, including breaking and entering, burglary and theft. Goetz moved to dismiss the complaint asserting that Challas knew or should have known of any claim for slander prior to the confirmation of Goetz's plan of reorganization, and as a result, the claim was discharged when Goetz's plan of reorganization was confirmed. Because the parties' motion papers relied on declarations and other evidence, the court treated the motion as a motion for summary judgment. After two contradictory affidavits created a clear question of fact, the parties agreed to hold

1 an evidentiary hearing solely with respect to the potentially dispositive issue of when the cause of action
 2 for slander against Goetz was first within Challas' fair contemplation. Based on the evidence adduced
 3 and the arguments of counsel, and for the reasons explained, the court concludes that the cause of action
 4 alleged in the adversary complaint was not within Challas' fair contemplation at the time that Goetz's
 5 plan of reorganization was confirmed and, therefore, was not discharged.

6 7 FACTS

8 Challas and Goetz are long-time acquaintances as a result of commercial real estate activities
 9 in Los Altos, California. Jane Challas, John's wife, is a shareholder of 4920 Corporation ("4920"), a
 10 company that owns a building located at 4920 El Camino Real in Los Altos. From time to time, Challas
 11 has been an agent for the property. The Goetz family, and later Goetz himself, owned a nearby building
 12 located at 4906 El Camino Real. The business connection between Challas and Goetz developed into
 13 something of a friendship among the two men and their wives. However, Challas testified that the
 14 relationship deteriorated significantly when Challas agreed to serve as a witness against Goetz in a 2001
 15 state court action. In that action, members of the Goetz Family Trust accused Goetz of fraud and other
 16 breaches of fiduciary duty arising out of Goetz's purchase of the 4906 building from his father, shortly
 17 before his father's death. Challas indicated that the friendship ended in 2002 when Goetz sent Challas
 18 an email concerning Challas' use of Goetz's Chevy Suburban. The details surrounding the email were
 19 not offered into evidence.

20 Beginning in 2000, a law firm known as Reynolds, Casas & Riley, LLP became a tenant at 4920,
 21 El Camino Real, and Challas hired Goetz's wife, Diana, to decorate the firm's suite. The landlord-
 22 tenant relationship, however, was contentious. By May 2003, 4920 had initiated a state court unlawful
 23 detainer action to evict RC&R from the premises. A few months later, in August 2003, RC&R filed a
 24 separate state court action against 4920 asserting various tort and breach of contract claims ("RC&R
 25 action"). The RC&R complaint alleges, in part, that Challas, along with several other defendants,
 26 conspired to and did enter RC&R's office suite on June 16, 2002 with a hidden purpose of stealing
 27 RC&R's copy of its office lease, altering the copy to reflect higher rates of rent than RC&R had agreed
 28 to pay, and destroying the original lease. The complaint further alleges that 4920's unlawful detainer

1 action was premised on the wrongfully altered lease. The allegations regarding Challas and the
2 alteration of the lease are on information and belief. The attorney who drafted the complaint, Samuel
3 Goldstein, testified that before the complaint was filed, Sheila Riley, a principal of RC&R, had advised
4 him that, nearly a year earlier, she had had a conversation with Goetz in which Goetz told her that
5 Challas had bragged to Goetz about entering into the RC&R offices and removing documents.
6 Goldstein noted, however, that Riley had instructed him not to identify Goetz as the source of the
7 information.

8 Early in the RC&R action, the state court stayed discovery, and 4920 did not serve its first set
9 of interrogatories on RC&R until February 2006. One of those interrogatories asked RC&R to identify
10 all individuals who: a) witnessed the alleged June 16, 2002 trespass into RC&R or the events occurring
11 immediately before or after the incident; b) made a statement at the scene of the alleged trespass into
12 RC&R; c) heard any statements made about the alleged trespass into RC&R by an individual at the
13 scene; and d) may have knowledge of the alleged trespass into RC&R. Although RC&R was aware that
14 Goetz claimed to have heard statements about the incident from Challas, RC&R did not specifically
15 identify Goetz in response to subpart c) of the interrogatory. Instead, RC&R stated that it lacked
16 sufficient information to respond. However, in response to subpart d), RC&R included Goetz and his
17 wife in the middle of a list of approximately sixteen individuals or entities who might have knowledge
18 of the incident.

19 On June 6, 2006, this court entered an order confirming the Goetz' chapter 11 plan of
20 reorganization. Goetz and his wife had filed a chapter 11 petition eight months earlier, in October 2005,
21 because the fraud and breach of fiduciary duty lawsuit filed by the Goetz Family Trust had resulted in
22 a judgment against Goetz. The Goetz schedules listed Challas as a creditor holding an unsecured claim
23 of \$75,000 related to "attorneys' fees."

24 Six weeks after confirmation, on July 26, 2006, Riley gave her deposition in the RC&R action.
25 Challas was present for her testimony. Riley stated that back on August 22, 2002, she had telephoned
26 Diana Goetz, the decorator for the RC&R office space, because Riley had just received a letter from
27 4920 indicating the RC&R owed 4920 money for things that the firm never heard about. Diana Goetz
28 asked her husband to come to the phone and, when he did, Goetz told Riley that Challas had bragged to

1 Goetz about planning the June 16, 2002 incident at RC&R's office. Goetz told Riley that Challas was
2 an evil man and that Challas had said that while he was in the office, he had copied papers from
3 RC&R's lease file in order to "get" the law firm. Goetz stated that Challas had shown him some of the
4 copies, but Goetz told Riley that he would deny ever speaking with Challas because he and John "had
5 things on each other."

6 Both Challas and Chris Ashworth, an attorney that initially represented Challas in the both the
7 unlawful detainer and the RC&R actions, testified at trial that they first learned that Goetz was the
8 source of the information behind the trespass allegations in the RC&R action during or after Riley's
9 deposition. Shortly after the Riley deposition, Challas contacted George Eshoo, his counsel in this
10 adversary proceeding, and asked for legal assistance because Goetz was spreading lies about him. In
11 mid-October 2006, Challas filed a state court slander action against Goetz. That complaint was removed
12 to this court and serves as the basis of this adversary proceeding.

13 To counter Challas' evidence that he did not fairly contemplate a claim against Goetz until he
14 heard Riley's deposition testimony, Goetz offered his own testimony and that of RC&R's state court
15 attorney, Goldstein. Goetz testified that Challas often complained bitterly about RC&R's failure to pay
16 rent and how he wanted to get the firm out of the 4920 building. Then, a few days after June 16, 2002,
17 Goetz was sitting on his patio with his wife when Challas telephoned. When Goetz answered, Challas
18 bragged that he had "solved his problem" with RC&R. Challas told Goetz that he, Challas, had gone
19 into RC&R's office, removed some documents, and solved his problem. Challas denies that this
20 telephone conversation ever took place and denies that he ever removed any documents from RC&R's
21 office suite.

22 In addition to the filing of the complaint in the RC&R action, Goldstein testified that there were
23 several occasions prior to June 2006 when Challas either knew of or should have fairly contemplated
24 his slander action against Goetz. First, in July 2003, Goldstein deposed Challas as part of 4920's
25 unlawful detainer action. At that deposition, Goldstein asked Challas pointed questions about whether
26 Challas had ever told anyone that Challas had taken documents from RC&R's offices. Within the next
27 few weeks, Goldstein had a conversation with Ashworth where Ashworth specifically asked whether
28 it was Goetz that had said that Challas was talking about the June 16, 2002 incident. Although

1 Goldstein told Ashworth that he could not respond, Goldstein believes the conversation demonstrates
2 that Challas knew that Goetz was the source of the information. Goldstein recalls that he surprised that
3 Ashworth named Goetz because Riley had instructed Goldstein to take care not to reveal Goetz as the
4 source of the information. Goldstein assumed that Ashworth must have learned Goetz's identity directly
5 from Challas.

6 Goldstein further stated that RC&R's March 2006 answers to 4920's interrogatories should have
7 put Challas on notice that Goetz was the source of the allegations that Challas had taken documents from
8 RC&R. The responses identified Mr. and Mrs. Goetz as individuals who might have knowledge of the
9 June 16, 2002 incident, and their names should have stood out because they were the only individuals
10 identified that were not related to RC&R, 4920 or the local authorities. Then, sometime in June 2006,
11 RC&R responded to additional special interrogatories that 4920 had propounded. Goldstein recalls that
12 those interrogatories referred more explicitly to Goetz as the source of the allegations regarding Challas
13 and the June 16, 2002 incident. The actual responses, however, were not offered into evidence, and it
14 is not known whether those responses were served before confirmation on June 6, 2006.

15 DISCUSSION

16 Under § 1141(d), confirmation of a chapter 11 plan discharges the debtor from any debt or claim
17 that arose before the date of confirmation. The Ninth Circuit uses the "fair contemplation" test to
18 determine when a claim arises. See *In re Cool Fuel, Inc.*, 210 F.3d 999 (9th Cir. 2000)(tax claims);
19 *Corman v. Morgan (In re Morgan)*, 197 B.R. 892 (N.D. Cal. 1996)(fraud prevention), *aff'd*, 131 F.3d
20 147 (9th Cir. 1997); *In re Jensen*, 995 F.2d 925 (9th Cir. 1993)(environmental clean-up under CERCLA).
21 Under this test, the court must consider whether Challas had a fair basis for contemplating that he might
22 have a claim against the debtor prior to the confirmation of the debtor's plan. *Morgan*, 197 B.R. at 899.
23 If yes, the claim is discharged by the confirmation, but if not, the claim is not discharged.

24 Consistent with the goal of providing debtors with a fresh start, the Bankruptcy Code broadly
25 defines the term "claim" to include any right to payment from the debtor, regardless of whether that right
26 is liquidated, contingent, matured or disputed.. See 11 U.S.C. § 101(5). Thus, a claim can arise before
27 actual injury occurs or before all the jurisdictional prerequisites to bringing the claim are satisfied.
28 Nevertheless, in choosing the fair contemplation test, the Ninth Circuit rejected the notion that claims

1 can be discharged before a creditor knows or should know that it has rights against the debtor. *Jensen*,
2 995 F.2d at 931-32; *In re Conseco Life Insurance Co. Cost of Insur. Litigation*, 2005 WL 2203150, at
3 *8 (N.D. Cal. Apr. 13, 2005). As a result, a claim will not be discharged unless, prior to confirmation,
4 the creditor had real or constructive notice of all the facts needed to reasonably anticipate a potential
5 claim against the debtor.

6 Here, Challas testified that he had no reason to believe Goetz had slandered him until he heard
7 Riley's deposition testimony in July 2006, about six weeks after Goetz's plan of reorganization was
8 confirmed. To counter this prima facie showing, Goetz must demonstrate that the existence of facts and
9 circumstances from which Challas should have fairly contemplated that he had a potential slander claim
10 against Goetz prior to June 6, 2006.

11
12 **I. The Allegations of RC&R's 2003 Complaint Were Insufficient to Make Challas Fairly**
13 **Contemplate a Slander Action Against Goetz.**

14 Although Challas was named as a defendant in the RC&R action, the allegations that Challas
15 conspired with other individuals to break into the law firm and remove documents were all on
16 "information and belief." Further, the complaint contained no facts establishing the basis of that
17 information and belief. As a result, there was nothing in RC&R's complaint to suggest that Goetz might
18 have been the source of any allegations, much less that he had allegedly slandered Goetz by telling other
19 people that Challas had admitted that he was involved in the break-in. Significantly, Goldstein testified
20 to the contrary. From the outset, he had been specifically instructed to protect Goetz's identity from
21 discovery. Thus, it appears that the complaint was carefully drafted to avoid identifying Goetz. Finally,
22 with discovery stayed, Challas was denied all opportunity to investigate the source of the allegations until
23 the stay was lifted. Under these facts, it cannot be said that the mere existence of RC&R's lawsuit
24 reasonably put Challas on notice of a slander action against Goetz.

25
26 **II. The March 2006 Responses to Interrogatories Were Not Sufficient to Cause Challas to**
27 **Fairly Contemplate a Slander Action Against Goetz.**

28 As noted above, from the beginning of the RC&R action, Goldstein was operating under
instructions to avoid revealing Goetz's identity. His effort to comply with his client's instructions is

1 evident from his carefully crafted response to 4920's first set of interrogatories. He avoided identifying
 2 Goetz as someone who had heard statements from any other person who had been at the scene of the June
 3 16, 2002 incident. Rather, he more ambiguously identified Mr. and Mrs. Goetz, together, as people that
 4 might have some knowledge of the June 16, 2002 incident. This response certainly creates no specific
 5 impression that Goetz had been spreading slanderous statements about Challas.

6 Additionally, the court is not persuaded that the inclusion of Mr. and Mrs. Goetz's names should
 7 have stood out to Challas and, as a result, put him on notice to inquire further. First, there is no evidence
 8 that Challas himself ever saw the discovery responses. After receiving RC&R's complaint, Challas hired
 9 attorneys and left the handling of the RC&R action in his attorneys hands. Challas testified that he had
 10 no idea what his attorney sent out as discovery, and he has no recollection of any particular conversation
 11 with his counsel regarding discovery. Challas does not recall going over RC&R's interrogatory response
 12 that identifies Goetz as a person that might have knowledge, and he had no conversations with his
 13 attorney regarding any specific person as the perpetrator of the allegations surrounding the June 16, 2002
 14 incident. There is also no reason to believe that including both Mr. and Mrs. Goetz in the interrogatory
 15 responses would have stood out to Challas' attorneys. Ashworth testified that he believed he had heard
 16 of Goetz because Goetz had some kind of management role related to 4920. This suggests that Ashworth
 17 would not have considered the inclusion of the Goetz name as unusual. Further, there is no evidence
 18 indicating that Margaret Schneck, who replaced Ashworth as Challas' counsel, would have identified the
 19 Goetz name as unusual.

20
 21 **III. Goetz's Testimony That Challas Discussed the June 16, 2002 Incident With Goetz Is Not**
 22 **Credible.**

23 At trial, Goetz asserted for the first time that Challas should have fairly contemplated a potential
 24 slander action against Goetz as early as June 2002 when Challas allegedly told Goetz that he had
 25 removed and altered documents located in RC&R's office suite. Goetz reasons that once Challas
 26 revealed such stunning information, Challas should have fairly contemplated that Goetz would repeat the
 27 information to others. Because truth is a defense to slander, the court expects that whether or not Challas
 28 actually made admissions to Goetz will be hotly disputed at any trial on the merits of this slander action.

1 However, in determining whether the matter can proceed to trial, the court concludes that it is enough
2 that Goetz's credibility regarding the alleged admissions is highly doubtful. Near the time of the June
3 2002 incident, Goetz was questioned by the local police investigating the incident. The police
4 specifically asked Goetz if Challas had told Goetz that Challas was involved in the break-in, but Goetz
5 denied that any such conversation with Challas had ever taken place. Goetz contends that he lied to the
6 police but now has testified truthfully about his conversation with Challas on the witness stand. The
7 court does not know yet whether Goetz lied to the police or lied in court, but Goetz's willingness to lie
8 to authorities has substantially damaged his credibility. It is also significant that questions regarding
9 Goetz's honesty stretch beyond this adversary proceeding. The precipitating event for the Goetz's
10 chapter 11 case was the entry of a judgment for fraud and breach of fiduciary duty against Goetz in the
11 lawsuit filed by other members of his family. Finally, it is questionable that, in June 2002, Challas would
12 have trusted Goetz enough to make the alleged admissions to him. By that time, the friendship between
13 Goetz and Challas was ending, and Challas had agreed to be a witness against Goetz in the fraud action
14 against Goetz.

15 In light of all of these factors, the court concludes that evidence offered to date is too doubtful
16 to overcome Challas' denial that the conversation with Goetz ever took place and his affirmative
17 testimony that he first learned of Goetz's slanderous statements in July 2006. As a result, the record does
18 not adequately demonstrate that Challas fairly contemplated the potential for a slander action against
19 Goetz prior to the June 2006 confirmation of Goetz's plan of reorganization. What additional evidence
20 can be offered at a trial on the merits remains to be seen.

21 22 CONCLUSION

23 Based on the foregoing, the court concludes that the cause of action for slander alleged in the
24 adversary complaint was not within Challas' fair contemplation at the time the plan of reorganization was
25 confirmed. As a result, the cause of action was not discharged upon confirmation.

26 Good cause appearing, IT IS SO ORDERED.

27
28 ***** END OF ORDER *****

1 Adv. P. 06-5197
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3

4 **UNITED STATES BANKRUPTCY COURT**
5 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
6 **SERVICE LIST**

7 George P. Eshoo, Esq. Stanley A. Zlotoff
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UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

EXHIBIT 2

1 Stephen Goetz
13725 Robleda Road
2 Los Altos, CA 94022
Telephone: (650) 941-6000
3 In Pro Per

4
5 UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
6

7 In re: Stephen J.R. Goetz) Chapter 11
8)
And Diana Goetz,)
9) Case No.: 05-57623 MM
Debtors.)
10 _____/
11)
John Challas,)
12) Adv. Pro. No:06-5197
Plaintiff,)
13)
Vs.)
14)
Steven Goetz, et.al.,)
15)
_____/
Defendants. /

16 NOTICE OF APPEAL

17 Debtor-Defendant Stephen Goetz hereby appeals from the
18 Order determining non-dischargeability of Plaintiff's cause of
19 action for slander, which Order was entered on the Court's
20 docket on October 22, 2007.

21 The names of all parties to the Order and the names,
22 addresses and telephone numbers of their respective attorneys
23 are as follows:
24
25

1 Stephen Goetz
13725 Robleda Rd.
2 Los Altos, CA 94022
(650) 941-6000
3 Debtor-Defendant/Appellant In Pro Per

4 John Challas
Plaintiff/Appellee

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8 Daniel D. McGee, esq.
Mark E. Ellis
Wendy D. Vierra, esq.
9 Ellis, Coleman, Poirer & La Voie
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10 Sacramento, CA 95825
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11
12 Dated: November 1, 2007

13
14
15 /s/Stephen Goetz
16
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21
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24
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EXHIBIT 3

1 Stephen Goetz
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2 Los Altos, CA 94022
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3 In Pro Per

4
5 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA

6
7 In re: Stephen J.R. Goetz) Chapter 11
8)
And Diana Goetz,)
9) Case No.: 05-57623 MM
Debtors.)
10 _____/
11 John Challas,)
12) Adv. Pro. No:06-5197
Plaintiff,)
13)
Vs.)
14)
Steven Goetz, et.al.,)
15)
_____/
Defendants. /

16 **STATEMENT OF ISSUES AND DESIGNATION OF THE RECORD**

17 Debtor-Defendant and Appellant Stephen Goetz hereby
18 submits his Statement of Issues and Designation of the Record
19 on Appeal.

20 **STATEMENT OF ISSUES**

21 Did the Court misinterpret or misapply the "fair
22 contemplation" test?

23 Did the Court use an incorrect legal standard with respect
24 to ruling on cross motions for summary judgment?

25 **DESIGNATION OF THE RECORD**

The record on this appeal consists of:

Item NO.	Description	Date Filed	Dkt. NO.
1	Docket Sheet	n/a	n/a
2	Notice of Removal	11/2/2006	1
3	Motion to Dismiss	11/22/2006	3
4	Notice of Hearing	12/11/2006	4
5	Response	2/2/2007	8
6	Reply including		
7	Attached Declaration	3/1/2007	9
8	Objections	3/30/2007	10
9	Declaration	3/30/2007	11
10	Declaration	4/4/2007	12
11	Transcript	5/15/2007	14
12	Request to Take Judicial		
13	Notice	7/13/2007	18
14	Additional Request	7/13/2007	19
15	Chronology	7/13/2007	20
16	Transcript	10/3/2007	21
17	Memorandum Decision	10/19/2007	22
18	Trial Exhibits 1-4	n/a	n/a
19	Notice of Appeal	11/2/2007	24

Dated: 11/1/2007

/s/Stepehn Goetz

EXHIBIT 4

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

In re
Stephen J.R. Goetz and

Case No. 05-57623-MM

NOV 06 2007

Diana Goetz

Adversary No. 06-5197

CLERK
United States Bankruptcy Court
San Jose, California

Debtor(s) /

Chapter 11

John Challas

Plaintiff(s)

v.

Steven Goetz

Defendant(s)/

NOTICE OF REFERRAL OF APPEAL TO BANKRUPTCY APPELLATE PANEL

TO ALL PARTIES:

YOU AND EACH OF YOU are hereby notified that a notice of appeal has been filed by Stephen Goetz with the Clerk of the Bankruptcy Court. By virtue of the orders of the Judicial Council of the Ninth Circuit and the District Court for this district, the above appeal has been referred to the United States Bankruptcy Appellate Panel of the Ninth Circuit (BAP).

Dated: November 6, 2007

GLORIA L. FRANKLIN, Clerk

By: Shook E. P. J.
Deputy Clerk

Re: 05-57623-MM
Adv. 06-5197

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed and qualified clerk in the office of the Northern District of California, San Jose, California, hereby certify:

That I, in the performance of my duties as such Clerk, served a copy of the foregoing document by depositing it in the regular United States mail at San Jose, California on the date shown below, in a sealed envelope bearing the lawful frank of the United States Bankruptcy Court addressed as listed below.

Stephen Goetz
13725 Robleda Rd.
Los Altos, CA 94022

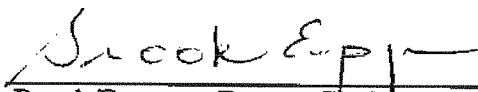
George P. Eshoo, Esq.
Law Offices of Eshoo & Assoc.
702 Marshall Street #500
Redwood City, CA 94063

Clerk of the Bankruptcy Appellate
Panel
Attn. Edwina Clay
125 South Grand Ave.
Pasadena CA 91105

Daniel D. McGee, Esq.
Mark E. Ellis
Wendy D. Vierra, Esq.
Ellis, Coleman et al
555 University Avenue #200
Sacramento, CA 95825

Office of the U.S. Trustee
280 S. First St. Room 268
San Jose CA 95113

Dated: November 6, 2007



Brook Esparza, Deputy Clerk

EXHIBIT 5

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit
125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

RE: STEPHEN J.R. GOETZ and DIANA GOETZ

Appellant: Stephen J.R. Goetz

BAP No: NC-07-1418

BK. NO: 05-57623-MM

ADV. No(s): 06-5197

OPENING LETTER

Notice of Appeal in this case has been received by the Bankruptcy Appellate Panel (BAP) and assigned the case number above. All papers filed with the BAP should be in the form of an original and three copies.

The BAP docket and other court information is available through the National PACER system. <http://pacer.bap09.uscourts.gov>

Enclosed are the 9th Cir. BAP Rules governing practice before the BAP. Appeals are also governed by Parts VIII and IX of the Federal Rules of Bankruptcy Procedure (F.R.B.P.), and some parts of the Federal Rules of Appellate Procedure (F.R.A.P.) and the local rules of the Ninth Circuit (Circuit Rules). See 9th Cir. BAP Rule 8018(b)-1.

Pursuant to 9th Cir. BAP Rule 8001(a)-1, please immediately send the BAP Clerk a copy of the signed and entered order or judgment being appealed if it was not attached to your notice of appeal.

After a Notice of Appeal has been filed, the parties' next step in prosecuting this appeal is compliance with F.R.B.P. 8006 and 8007, which require Appellant to file within 10 days in the bankruptcy court a designation of record, statement of issues on appeal, and a notice regarding the ordering of transcripts. Under these rules Appellee may also file a supplemental designation of record and order transcripts. The party ordering the transcripts must make satisfactory arrangements for payment of their costs.

Even if transcripts are not ordered, Appellant is required to file with the bankruptcy court a notice stating that none are required. See also 9th Cir. BAP R. 8006-1.

The parties should note that the designation of record under F.R.B.P. 8006 is a necessary procedural step in prosecuting an appeal and the parties may not later include in their excerpts of the record documents which have not been designated.

The record and bankruptcy file remain with the Clerk of the bankruptcy court and the Panel reviews only those items which are reproduced and included in the excerpts of the record filed at the time of the briefs. While the Panel may call up the formal record, in practice this rarely occurs.

Further, it is the parties' responsibility to monitor the appeal to ensure that transcripts are timely filed and the record is completed in a timely manner. Under F.R.B.P. 8007(a), the court reporter is required to file transcripts within 30 days of receipt of the parties' request, unless an extension has been granted.

After the record is complete, the Clerk of the bankruptcy court will send a Certificate of Record, sometimes referred to as a Certificate of Readiness or Certificate of Transcripts, to the BAP Clerk. This triggers the issuance of the briefing schedule by the BAP Clerk. The briefing schedule contains time deadlines and instructions regarding filing of briefs. However, the parties should be aware that the time periods set forth in the briefing schedule are relatively short and extensions of time greater than 15 days are generally granted only based on a showing of good cause. See F.R.B.P. 8009 and 9th Cir. BAP R. 8009(a)-1.

Appeals are set for hearing in the bankruptcy district from which the appeal arose whenever feasible. To expedite the appeal or if the parties feel argument is unnecessary, they may file a stipulation or motion to submit their appeal on the briefs and record, thereby waiving oral argument. The Panel will also consider stipulations requesting an alternative hearing location or hearing by telephone conference. Such motions should be filed at the earliest possible date, generally with the opening brief, as once a case has been scheduled for argument, continuance and request to change time and place are rarely granted.

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, hereby certifies that a copy of the document on which this certificate appears was transmitted this date to all parties of record to this appeal.

By: Edwina Clay

Deputy Clerk: November 13, 2007

RULES
OF THE
UNITED STATES
BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

PREAMBLE

These rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit are promulgated under the authority of Federal Rule of Bankruptcy Procedure 8018.

Adopted, as Revised: February 24, 2000

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8001(a)-1
NOTICE OF APPEAL

ORDER BEING APPEALED. The appellant shall attach to the notice of appeal filed in bankruptcy court a copy of the entered judgment, order or decree from which the appeal was taken. The clerk of the bankruptcy court shall forward these items to the BAP Clerk. If the notice of appeal is filed before entry of the order being appealed, it is appellant's duty to forward to the BAP Clerk a copy of the judgment or order immediately upon entry.

8001(e)-1
ELECTION TO TRANSFER APPEAL TO DISTRICT COURT

(a) TRANSFER. The Panel may transfer an appeal to the district court to further the interests of justice, such as when a timely statement of election has been filed in a related appeal, or for any other reason the Panel deems appropriate.

(b) ELECTION PROCEDURE WHEN MOTION FOR LEAVE TO APPEAL IS PENDING. If appellant moves for leave to appeal pursuant to FRBP 8003, and fails to file a separate notice of appeal concurrently with filing the motion for leave, the motion for leave shall be treated as if it were a notice of appeal for purposes of calculating the time period for filing an election.

8006-1
TRANSCRIPTS

The excerpts of the record shall include the transcripts necessary for adequate review in light of the standard of review to be applied to the issues before the Panel. The Panel is required to consider only those portions of the transcript included in the excerpts of the record. Parties shall consult local bankruptcy rules with regard to the proper procedure for ordering transcripts or for indicating that transcripts are not necessary.

Explanatory Note:

This rule addresses two problems. The first occurs when appellants challenge the oral tentative rulings, and/or the oral findings of fact and conclusions of law of the bankruptcy court, and do not include sufficient transcripts in the excerpts of the record to allow the Panel to properly review the bankruptcy court's

decision. If findings of fact and conclusions of law were made orally on the record, a transcript of those findings is mandatory. *In re McCarthy*, 230 B.R. 414, 416 (9th Cir. BAP 1999).

The second problem arises when an appellant challenges a factual finding. In order to review a factual finding for clear error, the record should usually include the entire transcript and all other relevant evidence considered by the bankruptcy court. See *In Re Friedman*, 126 B.R. 63, 68 (9th Cir. BAP 1991) (failure to provide an adequate record may be grounds for affirmance); *In re Burkhart*, 84 B.R. 658 (9th Cir. BAP 1988).

8007(b)-1

DOCKETING APPEAL AND APPELLATE RECORD

As soon as the statement of issues, designation of record, and any transcripts that have been designated are filed with bankruptcy court, the clerk of the bankruptcy court shall transmit to the BAP Clerk a certificate that the record is complete. The BAP Clerk shall forthwith notify the parties of the date the certificate is filed at the BAP, and this date shall constitute the date of entry of the appeal on the docket for purposes of FRBP 8009. The record shall be retained by the clerk of the bankruptcy court. The BAP Clerk may request a copy of the record from the clerk of the bankruptcy court.

8008(a)-1

COMMUNICATIONS

All communications to the BAP shall be addressed to the Clerk of the United States Bankruptcy Appellate Panel of the Ninth Circuit, Richard H. Chambers Court of Appeals Building, 125 South Grand Avenue, Pasadena, California 91105.

8008(a)-3

FAX FILING

The BAP does not accept for filing documents transmitted by telephone facsimile machine ("fax"), except in emergency circumstances. Permission of the BAP Clerk, prior to the transmittal of the document, is always required.

Any document transmitted to the BAP by fax must be served on all other parties by fax or hand delivery, unless another form of service is authorized by the BAP Clerk, and the method of service shall be expressly stated on the proof of service. Within three days after the fax transmittal, the filing party shall file a signed original and the necessary copies with the BAP.

8009(a)-1

BRIEFS; NUMBER OF COPIES; EXTENSIONS OF TIME

(a) Number. A party filing briefs shall file an original and four (4) copies with covers, bound separately from the excerpts of the record. At the direction of the BAP the parties may be required to provide additional copies.

(b) Motion for Extension of Time for Filing Brief.

(1) Requirements. A motion for extension of time to file a brief shall be filed within the time limit prescribed by these rules for the filing of such brief and shall be accompanied by a proof of service. The motion shall be supported by a declaration stating:

- (A) When the brief was initially due;
- (B) How many extensions of time, if any, have been granted;
- (C) Reasons why this extension is necessary;
- (D) The specific amount of time requested; and
- (E) The position of the opponent(s) with respect to the motion or why the moving party has been unable to obtain a statement of such position(s).

(2) BAP Clerk Authority. The BAP Clerk is authorized to grant extensions of time under the direction and guidelines of the Panel.

(3) Consequences. Appellant's failure to file a brief timely may result in the dismissal of the appeal. A brief received after the due date will not be accepted for filing unless it is accompanied by a motion for an extension of time and the motion is granted. The Panel has no obligation to consider a late brief. Sanctions may be imposed, such as the waiver of oral argument, monetary sanctions or dismissal.

8009(b)-1

APPENDIX (EXCERPTS OF THE RECORD)

(a) Number and Form. A party filing excerpts of the record shall file an original and four (4) copies bound separately from the briefs.

- (1) Each copy shall be reproduced on white paper by any duplicating process capable of producing a clearly legible image.
- (2) Each copy shall be bound with a white cover.
- (3) The cover of the excerpts shall contain the caption information specified by 9th Cir. BAP Rule 8010(a)-1(a)(2).

(b) Organization of Appendix.

- (1) Documents in the appendix shall be divided by tabs.
- (2) The pages of the excerpts shall be continuously paginated.
- (3) The appendix shall contain a complete table of contents listing the documents and identifying both the tab and page number where each document is located. If the appendix has more than one volume, the table of contents shall also identify the volume in which each document is located.

Explanatory Note:

The Panel generally limits its review to an examination of the excerpts of the record as provided by the parties. The Panel is not obligated to examine portions of the record not included in the excerpts. See In re Kritt, 190 B.R. 382, 386-87 (9th Cir. BAP 1995); In re Anderson, 69 B.R. 105, 109 (9th Cir. BAP 1986).

The parties are further referred to FRBP 8010 (a)(1)(D) and (a)(2) which address the related problem created by appellants who do not make explicit references to the parts of the record that support their factual allegations and arguments. Opposing parties and the court are not obliged to search the entire record unaided for error. See Dela Rosa v. Scottsdale Memorial Health Systems, Inc., 136 F.3d 1241 (9th Cir. 1998); Syncom Capital Corp. v. Wade, 924 F.2d 167, 169 (9th Cir. 1991); FRAP Rule 10(b)(2).

8010(a)-1**FORM OF BRIEFS AND CERTIFICATION REQUIREMENTS**

(a) Form. Briefs shall be produced by a standard typographic printing process that produces a clear black image on white paper, 8 ½ inches by 11 inches, with one-inch margins, in at least 14 point proportional type, or 10.5 point monospaced type, double-spaced, on opaque, unglazed paper.

(1) BRIEF COVER COLORS:

Appellant's opening brief:	BLUE
Appellee's opening brief:	RED
Appellant's reply brief:	GREY

(2) COVER INFORMATION:

Name of court
Case numbers (BAP, bankruptcy court case, and if applicable, adversary numbers)
Name of Debtor
Names of appellant(s) and appellee(s)
Title of document
Name, address, telephone number, and bar number of counsel filing document

(b) Certification as to Interested Parties. To enable the judges of a Panel to evaluate possible disqualification or recusal, all parties, other than governmental parties, shall attach to the inside back cover of their initial briefs, a list of all persons, associations of persons, firms, partnerships and corporations that have an interest in the outcome of the case. The certification should be in substantially the following form:

Certification Required by BAP Rule 8010(a)-1(b)

[BAP NUMBER, DEBTOR'S NAME]

The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable judges of the Panel to evaluate possible disqualification or recusal [list the names of all such parties and identify their connection and interest]:

Signed

Dated

(c) Certification of Related Cases. The appellant shall attach to the inside back cover of each copy of the opening brief a statement of all known related cases and appeals before the United States Court of Appeals, the United States District Court, or the BAP. A related case is defined as one which involves substantially the same litigants, substantially the same factual pattern or legal issues, or arises from a case previously heard by the Panel. The certification should be in substantially the following form:

Certification Required by BAP Rule 8010(a)-1(c)

[BAP NUMBER, DEBTOR'S NAME]

The undersigned certifies that the following are known related cases and appeals [list the case name, court and status of all related cases and appeals]:

Signed

Dated

Explanatory Note:

Failure to comply with the Briefing Rules may result in striking the brief and dismissing the appeal, N/S Corp., v. Liberty Mutual Ins. Co., 127 F.3d 1145 (9th Cir. 1997), or imposing sanctions, In re MacIntyre, 181 B.R. 420, 422 (9th Cir. BAP 1995), aff'd, 77 F.3d 489 (9th Cir. 1996).

Briefs and excerpts of the record shall be securely fastened by any appropriate means.

**8010(c)-1
LENGTH OF BRIEFS**

Except with leave of the Panel, appellant's and appellee's initial briefs shall not exceed thirty (30) pages, and reply briefs shall not exceed twenty (20) pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations or similar materials.

Explanatory Note:

Motions for leave to exceed page limitations are rarely granted. Motions should be filed well in advance of the due date for the brief.

8011(d)-1
EMERGENCY MOTIONS

(a) Form and Number. An emergency motion must have a cover page bearing the legend "Emergency Motion" in large, bold type. The motion must be filed with the BAP Clerk in an original and three copies.

(b) Contents. The motion and supporting declaration(s) must set forth the facts showing the existence and nature of the alleged immediate and irreparable harm.

(c) Appendix. The emergency motion must be accompanied by an appendix containing:

- (1) A conformed copy of the notice of appeal, and
- (2) A copy of the entered judgment, order or decree from which the appeal was taken;
- (3) If the emergency motion concerns a stay pending appeal, the appendix must also contain:
 - (i) a conformed copy of the court's order denying or granting the stay and any explanation by the court of its ruling, or a declaration explaining why such a copy is unavailable; and
 - (ii) copies of all papers regarding the stay filed in bankruptcy court.

(d) Service. The motion and appendix must be accompanied by a proof of service showing service on all parties.

Explanatory Note:

When the emergency motion concerns a stay pending appeal, the parties are directed to In re Wymer, 5 B.R. 802, 805-07 (9th Cir. BAP 1980), for standards in granting a stay pending appeal.

8011(e)-1
DELEGATION OF AUTHORITY TO ACT ON MOTIONS

The BAP judges may delegate to the BAP Clerk authority to act on motions that are subject to disposition by a single judge pursuant to FRBP 8011(e), upon the condition that the order entered on the motion does not dispose of the appeal or resolve a motion for stay pending appeal. The order disposing of the motion is subject to reconsideration by a judge if a written request for judicial review is received within ten (10) days of the entry of the order.

8012-1
ORAL ARGUMENT

The BAP Clerk will provide notice of the time and place of argument. Once the hearing date is scheduled, a motion for continuance will be granted only under exceptional circumstances.

The Panel may determine that oral argument is not needed either *sua sponte* or on motion for submission of the appeal on the briefs. If the Panel determines that oral argument is not needed, it will issue an order to that effect.

Rule 8013-1
DISPOSITION OF APPEAL

(a) OPINION or MEMORANDUM. The Panel may determine that a written disposition of a matter before the Panel will be designated an OPINION if it:

- (1) Establishes, alters, modifies or clarifies a rule of law;
- (2) Calls attention to a rule of law which appears to have been generally overlooked;
- (3) Criticizes existing law; or
- (4) Involves a legal or factual issue of unique interest or substantial public importance.

A written disposition of a case not designated for publication will be captioned a MEMORANDUM.

(b) PUBLICATION. Publication of a final disposition means the BAP Clerk will release a copy to recognized channels for dissemination. Only opinions, and orders designated for publication by the Panel, will be published.

(c) CITATION. Unpublished memoranda and orders have no precedential value and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel.

(d) REQUEST FOR PUBLICATION. Any party may request, by letter, that the Panel publish a memorandum. The request must be received no later than 30 days after the filing of the memorandum and must state concisely the reasons for publication.

**8014-1
COSTS**

Costs under FRBP 8014 are taxed by filing a bill of costs with the clerk of the bankruptcy court.

**8018(b)-1
SILENCE OF LOCAL RULES**

In cases where Part VIII of the Federal Rules of Bankruptcy Procedure and these rules are silent as to a particular matter of practice, a Panel may apply the Rules of the United States Court of Appeals for the Ninth Circuit and the Federal Rules of Appellate Procedure.

**8018-2
CITATION TO RULES**

These rules shall be cited as:

"9th Cir. BAP R. _____."

**8070-1
DISMISSAL FOR FAILURE TO PROSECUTE**

When an appellant fails to file an opening brief timely, or otherwise fails to comply with rules or orders regarding processing the appeal, the BAP Clerk, after notice, may enter an order dismissing the appeal. The order dismissing the appeal is subject to reconsideration by the Panel if a written request for judicial review is received within ten (10) days of the entry of the order.

Rule 9001-1
DEFINITIONS

- (a) The words "BAP Clerk" as used in these rules mean the Clerk of the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (b) The word "Judge" as used in these rules, unless otherwise designated, means a member of the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (c) The word "Panel" as used in these rules means a panel of the judges of the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (d) The acronym "BAP" as used in these rules means United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (e) The acronym "FRBP" as used in these rules means Federal Rules of Bankruptcy Procedure.
- (f) The acronym "FRAP" as used in these rules means Federal Rules of Appellate Procedure.

9010-1
ATTORNEYS--Duties, Withdrawal, Substitution

(a) **DUTIES.** Counsel must ensure that the appeal is perfected on behalf of the represented party in a manner and within the times prescribed in these rules and must prosecute the appeal with diligence. Counsel must provide counsel's name, bar number, address, and telephone number on all documents filed with the BAP. Changes in address of counsel or client must be reported to the BAP Clerk in writing.

(b) **ADMISSION.** Any attorney admitted to practice before a District Court of the Ninth Circuit or the Court of Appeals for the Ninth Circuit and who is in good standing before such court shall be deemed admitted to practice before the BAP. An attorney not so admitted may apply to the BAP for permission to appear in a particular appeal.

(c) **WITHDRAWAL AND SUBSTITUTION.** No attorney who has appeared in an appeal before the BAP may withdraw without either:

- (1) Filing and serving a Notice of Substitution of Attorney. The notice shall contain substitute counsel's name, bar number, address, telephone number and signature; or
- (2) Obtaining an order of the BAP allowing the attorney to withdraw. The BAP may grant such an order if an attorney files and serves on opposing counsel and the attorney's client a motion to withdraw as counsel. Any

motion to withdraw shall include the client's current address and telephone number.

(d) **NOTICE OF APPEARANCE.** Immediately upon undertaking the representation, any attorney who represents a party in an appeal, and who is not identified in either the notice of appeal or a notice of substitution of attorney, shall file and serve a notice of appearance containing counsel's name, bar number, address, and telephone number.

<p style="text-align: center;">9010-2 PRO SE PARTIES</p>
--

Parties unrepresented by counsel and appearing before the Panel are considered to be "pro se parties" representing themselves. Only individuals are permitted to appear pro se. Pro se parties must ensure their appeal is perfected in a manner and within the time limits prescribed in these rules and must prosecute the appeal with diligence. Changes in address must be reported to the BAP Clerk in writing.

Explanatory Note:

See *In re Rainbow Magazine, Inc.*, 77 F.3d 278 (9th Cir. 1996); *In re Eisen*, 14 F.3d 469, 471 (9th Cir. 1994). Corporations, partnerships and associations are not permitted to appear in federal court except through a licensed attorney. *Rowland v. California Men's Colony*, 506 U.S. 194 (1993); *In re America West Airlines, Inc.*, 40 F.3d 1058 (9th Cir. 1994).

EXHIBIT 6

Mark E. Ellis # 127159
Daniel D. McGee # 218947
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Sacramento, CA 95825
Tel. (916) 283-8820
Fax (916) 283-8821

George P. Eshoo - 39081
Law Offices of George P. Eshoo & Associates
702 Marshall Street, Suite 500
Redwood City, CA 94063
Tel: (650) 364-7030
Fax: (650) 364-3054

Attorneys for Plaintiff JOHN CHALLAS

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re: Stephen J.R. Goetz and Diana
Goetz,

Debtors.

John Challas,

Plaintiff,

v.

Steven Goetz, and DOES 1 through 20,
Inclusive,

Defendants.

Chapter 11

Case No. 05-57623 MM

Adversary Proceeding No. 06-5197

**PLAINTIFF JOHN CHALLAS'S OBJECTION TO
APPEAL BEING HEARD AND DETERMINED BY
BANKRUPTCY APPELLATE PANEL**

Pursuant to General Order No. 24, Part II, sections 2.01(b) and 2.02(a), and the Judicial Council of the Ninth Circuit's Amended Order Establishing and Continuing the Bankruptcy Appellate Panel of the Ninth Circuit ("BAP"), Plaintiff JOHN CHALLAS ("Mr. Challas") hereby objects to the BAP hearing and determining Defendant Stephen Goetz's appeal of the order determining the non-

- 1 -

**PLAINTIFF JOHN CHALLAS'S OBJECTION TO APPEAL BEING HEARD AND DETERMINED BY
BANKRUPTCY APPELLATE PANEL**

Case: 06-05197 Doc #: 30 Filed: 11/26/2007 Page 1 of 3

FILED
NOV 26 2007
CLERK
United States Bankruptcy Court
San Jose, California

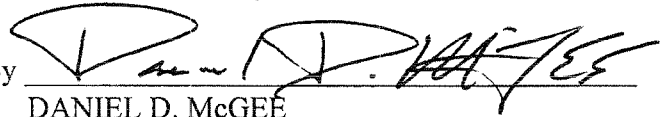
ORIGINAL

1 dischargeability of Mr. Challas's cause of action for slander, which order was entered on the
2 Bankruptcy Court's docket on October 22, 2007. Mr Challas further requests that said appeal be
3 transferred to the United States District Court for the Northern District of California.
4

5
6 Dated: November 20, 2007

ELLIS, COLEMAN, POIRIER, LAVOIE, &
STEINHEIMER LLP

7
8 By



9 DANIEL D. McGEE

10 Co-Counsel for Plaintiff JOHN CHALLAS
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CERTIFICATE OF SERVICE

I, Alexandria M. Felix, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 555 University Avenue, Suite 200 East, Sacramento, CA 95825.

On November 20, 2007, I served the following document(s) on the parties in the within action:

**PLAINTIFF JOHN CHALLAS'S OBJECTION TO APPEAL BEING HEARD AND
DETERMINED BY BANKRUPTCY APPELLATE PANEL**

X	BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at Sacramento, CA on this date, addressed as follows:
	BY HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows:
	VIA FACSIMILE: The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:
	VIA OVERNIGHT SERVICE: The above-described document(s) will be delivered by overnight service, to the following:

Stephen Goetz
13725 Robleda Road
Los Altos, CA 94022

In Pro Per

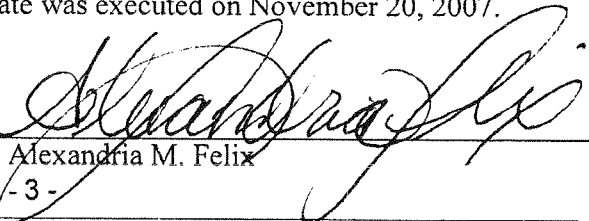
George P. Eshoo, Esq.
Law Offices of George P. Eshoo et al.
702 Marshall Street, Suite 500
Redwood City, CA 94063

Co-Counsel for John Challas

Clerk of The Bankruptcy Appellate Panel
125 South Grand Avenue
Pasadena, CA 91105

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on November 20, 2007.

By


Alexandria M. Felix

- 3 -

**PLAINTIFF JOHN CHALLAS'S OBJECTION TO APPEAL BEING HEARD AND DETERMINED BY
BANKRUPTCY APPELLATE PANEL**

EXHIBIT 7

FILED
07 DEC 17 11:07
CLERK: RICHARD W. WICKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: STEPHEN J.R. GOETZ,

Plaintiff,

v.

/,

Defendant.

No. C-07-06364 RMW

NOTICE OF FILING OF BANKRUPTCY
APPEAL AND ORDER SETTING STATUS
CONFERENCE

RE:

Bankruptcy Case: 05-57623 MM

Adversary No.: 06-5797

BAP No.: NC-07-1418

Appellant:

The appeal has been assigned the following case number C-07-06364 RMW before the Honorable Ronald M. Whyte.

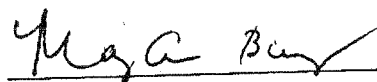
Upon the completion by parties of the perfection of the record pursuant to BR 8006 and 8007, the Bankruptcy Court will transmit a copy of the record on appeal to this court for docketing and issuance of a briefing schedule.

This matter is calendared for status conference on 4/18/2008 at in Courtroom 6, 4th Floor, SJ.

This date will stand vacated upon the filing in this Court of the record on appeal, at which time a briefing schedule will issue.

Dated: Dec 17, 2007

For the Court
Richard W. Wicking, Clerk



By: Deputy Clerk

cc: USBC
Counsel of Record

MARY ANN BUCKLEY

EXHIBIT 8

1 Mark E. Ellis # 127159
Daniel D. McGee # 218947
2 Ellis, Coleman, Poirier, LaVoie, & Steinheimer LLP
555 University Avenue, Suite 200 East
3 Sacramento, CA 95825
Tel. (916) 283-8820
4 Fax (916) 283-8821

5 George P. Eshoo - 39081
Law Offices of George P. Eshoo & Associates
6 702 Marshall Street, Suite 500
Redwood City, CA 94063
7 Tel: (650) 364-7030
Fax: (650) 364-3054

8 Attorneys for Plaintiff JOHN CHALLAS
9

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12
13

14 In re: Stephen J.R. Goetz and Diana
Goetz,
15 Debtors.
16

17 John Challas,
18 Plaintiff,
19

20 v.

21 Steven Goetz, and DOES 1 through 20,
Inclusive,
22 Defendants.
23

Chapter 11

Case No. 05-57623 MM

Adversary Proceeding No. 06-5197

**PLAINTIFF JOHN CHALLAS'S CASE
MANAGEMENT CONFERENCE STATEMENT**

Date: January 15, 2008

Time: 10:00 a.m.

Judge: Hon. Marilyn Morgan

24 On November 1, 2007, Defendant Stephen Goetz ("Goetz") appealed this Court's order dated
25 October 19, 2007. On November 1, 2007, Goetz, pursuant to **FRBP 8006**, also designated the entire
26 docket for this adversary proceeding to be included in the record on appeal, including the transcripts
27 for the hearings dated June 12, 2007 and July 13, 2007. In so doing, Goetz, pursuant to **FRBP 8006**,
28

FILED

JAN 10 2008

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

No
ORIGINAL

1 was required to immediately deliver to the reporter and file with the clerk a written request for the
2 transcripts and make satisfactory arrangements for payment of its costs. Goetz failed to perform this
3 act. Accordingly, it appears that Goetz has failed to perfect his appeal providing grounds for dismissal
4 of the same.

5 On November 6, 2007, this Court referred Goetz's appeal to the Bankruptcy Appellate Panel
6 ("BAP"). On November 13, 2007, the BAP transmitted to the parties its opening letter which indicated
7 that Goetz had failed to transmit a copy of the order being appeal from.

8 On November 26, 2007, Plaintiff John Challas ("Mr. Challas") filed an objection to the appeal
9 being heard and determined by the BAP. The appeal was thereafter transferred and assigned to the
10 Honorable Ronald M. Whyte of the Northern District Court of California. On December 17, 2007, the
11 Northern District Court set this matter for an April 18, 2008 status conference pending the parties'
12 perfection of the record. Upon the filing of the record on appeal, the Northern District Court is to
13 vacate the April 18, 2008 status conference at which time a briefing schedule will issue.

14 Given these circumstances, Mr. Challas respectfully requests that this Court continue this case
15 management conference.

16
17
18 Dated: January 10, 2008

ELLIS, COLEMAN, POIRIER, LAVOIE, &
STEINHEIMER LLP

19
20
21 By 

Daniel D. McGee

Co-Counsel for JOHN CHALLAS

CERTIFICATE OF SERVICE

I, Nichole M. Pruitt, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 555 University Avenue, Suite 200 East, Sacramento, CA 95825.

On January 10, 2008, I served the following document(s) on the parties in the within action:

PLAINTIFF JOHN CHALLAS'S CASE MANAGEMENT CONFERENCE STATEMENT

VIA ELECTRONIC SERVICE: The above-described document(s) will be delivered electronically through the Court's ECF/PACER electronic filing system, as stipulated by all parties to constitute personal service, to the following:

X

BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at Sacramento, CA on this date, addressed as follows:

BY HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows:

VIA FACSIMILE: The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:

VIA OVERNIGHT SERVICE: The above-described document(s) will be delivered by overnight service, to the following:

Stephen Goetz
13725 Robleda Rd.
Los Altos, CA 94022

IN PRO PER

George P. Eshoo, Esq.
Law Offices of George P. Eshoo, et.
702 Marshall Street, Suite 500
Redwood City, CA 94063

Co-Counsel for John Challas

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on January 10, 2008.

By

Nichole M. Pruitt

CERTIFICATE OF SERVICE

EXHIBIT 9

1 Mark E. Ellis # 127159
Daniel D. McGee # 218947
2 Ellis, Coleman, Poirier, LaVoie, & Steinheimer LLP
555 University Avenue, Suite 200 East
3 Sacramento, CA 95825
Tel. (916) 283-8820
4 Fax (916) 283-8821

5 George P. Eshoo - 39081
Law Offices of George P. Eshoo & Associates
6 702 Marshall Street, Suite 500
Redwood City, CA 94063
7 Tel: (650) 364-7030
Fax: (650) 364-3054

8 Attorneys for Appellee/Plaintiff JOHN CHALLAS
9

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12

13
14 In re: Stephen J.R. Goetz and Diana
Goetz,

15 Debtors.
16

17 John Challas,

18 Plaintiff,
19

20 v.

21 Steven Goetz, and DOES 1 through 20,
Inclusive,

22 Defendants.
23

Chapter 11

Case No. C-07-06364 RMW

[Bankruptcy Case No. 05-57623 MM
Adversary Proceeding No. 06-5197
BAP No. NC-07-1418]

**APPELLEE/PLAINTIFF JOHN CHALLAS' STATUS
CONFERENCE STATEMENT**

Date: April 18, 2008

Time: 10:30 a.m.

Judge: Hon. Ronald M. Whyte

24 On October 19, 2007, and following a day-long evidentiary hearing which occurred on July 13,
25 2007, the Bankruptcy Court for the Northern District of California, the Honorable Marilyn Morgan
26 presiding, signed an Order ruling that Appellee/Plaintiff John Challas' ("Mr. Challas") cause of action
27 for slander against Appellant/Defendant Stephen Goetz ("Goetz") was non-dischargeable. Said Order
28

1 was entered on the Bankruptcy Court's docket on October 22, 2008.

2 On November 1, 2007, Goetz, who is proceeding in pro per, appealed the October 19, 2007
3 Order.

4 On November 1, 2007, Goetz, pursuant to **FRBP 8006**, also designated the entire docket for the
5 underlying adversary proceeding to be included in the record on appeal, including the transcripts for
6 hearings dated June 12 and July 13, 2007. In so doing, Goetz, pursuant to **FRBP 8006**, was required to
7 immediately deliver to the reporter and file with the clerk a written request for the transcripts and make
8 satisfactory arrangements for payment of its costs. Goetz failed to perform these acts and has not taken
9 any steps to cure the same.

10 On November 6, 2007, this Court referred Goetz's appeal to the Bankruptcy Appellate Panel
11 ("BAP"). On November 13, 2007, the BAP transmitted to the parties its opening letter which indicated
12 that Goetz had failed to transmit a copy of the order from which Goetz is appealing.

13 On November 26, 2007, Mr. Challas filed an objection to Goetz's appeal being heard and
14 determined by the BAP. The appeal was thereafter transferred to this Court and assigned to the
15 Honorable Ronald M. Whyte.

16 On December 17, 2007, this Court set this appeal for an April 18, 2008 status conference
17 pending the parties' perfection of the record on appeal. Upon the filing of the record on appeal, this
18 Court was to vacate the April 18, 2008 status conference at which time a briefing schedule would
19 issue.

20 On January 10, 2008, Mr. Challas filed a case management conference ("CMC") statement in
21 the Bankruptcy Court in connection with a CMC which was set to occur on January 15, 2008. Mr.
22 Challas' CMC statement recited the aforementioned facts, including that Goetz had failed to comply
23 with **FRBP 8006** or to otherwise perfect his appeal rendering his appeal subject to dismissal. Mr.
24 Challas also indicated that this Court had set the appeal for an April 18, 2008 status conference.

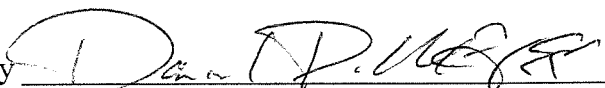
25 Goetz failed to file any CMC statement in connection with the January 15, 2008 CMC.
26 Ultimately, Judge Morgan continued the Bankruptcy Court's CMC until December 9, 2008 pending
27 the outcome of Goetz's appeal before this Court.

1 It is presently unknown whether Goetz intends to prosecute this appeal or to perfect the record.
2 In that Goetz has failed to perfect his appeal, which has now been pending for five months, it would
3 appear that the dismissal of Goetz's appeal is now eminently appropriate. See, e.g., Greco v.
4 Stubenberg (BAP 9th Cir. 1988) 859 F.2d 1401, 1404 [an appellant's failure to take steps required to
5 prosecute appeal, including failing to make a timely request for a transcript, is grounds for dismissal];
6 In re McCarthy (BAP 9th Cir. 1999) 230 B.R. 414, 417 [**FRBP 8006** requires, as mandatory, that an
7 appellant designate a record that includes both any opinion, findings of fact and conclusions of law of
8 the court, and any transcript that will be needed; failure to do so is grounds for dismissal]; In re
9 Winslow (D. Colo. 1990) 121 B.R. 598, 599 [appellant's failure to designate crucial portions of
10 transcript constitutes grounds for dismissal].

11 Dismissal is especially appropriate, and requested, since Mr. Challas informed Goetz of the
12 aforementioned deficiencies months ago by way of his January 10, 2008 CMC statement filed in the
13 Bankruptcy Court. Notwithstanding, Goetz has taken no action to perfect the record on his appeal or
14 to procure the crucial transcripts required by this Court.

15
16
17 Dated: April 3, 2008

ELLIS, COLEMAN, POIRIER, LAVOIE, &
STEINHEIMER LLP

18
19 By 

Daniel D. McGee

Co-Counsel for JOHN CHALLAS

CERTIFICATE OF SERVICE

I, Nichole M. Pruitt declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 555 University Avenue, Suite 200 East, Sacramento, CA 95825.

On April 3, 2008, I served the following document(s) on the parties in the within action:

APPELLEE/PLAINTIFF JOHN CHALLAS' STATUS CONFERENCE STATEMENT

X	BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at Sacramento, CA on this date, addressed as follows:
X	VIA ELECTRONIC SERVICE: The above-described document(s) will be delivered electronically through the Court's ECF/PACER electronic filing system, as stipulated by all parties to constitute personal service, to the following:

Stephen Goetz
13725 Robleda Road
Los Altos, CA 94022
(Via U.S. Mail)

Debtor In Pro Per

George P. Eshoo, Esq.
Law Offices of George P. Eshoo et al.
702 Marshall Street, Suite 500
Redwood City, CA 94063
(Via Electronic Service)

Co-Counsel for John Challas

Stanley A. Zlotoff
Attorney at Law
300 S. First Street, Suite 215
San Jose, CA 95113
(Via U.S. Mail)

Co-Counsel for John Challas

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on April 3, 2008.

By


Nichole M. Pruitt

EXHIBIT 10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-FILED

CIVIL MINUTES

DATE: April 18, 2008

Case No. C-07-06364-RMW

JUDGE: Ronald M. Whyte

IN RE: STEPHEN J.R. GOETZ

Title

G. Eshoo, D. Spence

Attorneys Present

No Appearance

Attorneys Present

COURT CLERK: Jackie Garcia

COURT REPORTER: Not Reported

PROCEEDINGS

CASE MANAGEMENT CONFERENCE

ORDER AFTER HEARING

Hearing Held. No appearance from the defendant. Plaintiff advised the Court that the defendant has
failed to perfect appeal. Plaintiff intends to file a motion to dismiss appeal.

EXHIBIT 11

William C. Lewis, Esq., Bar No. 77193
Sally A. Morello, Esq., Bar No. 122814
LAW OFFICES OF WILLIAM C. LEWIS
510 Waverley Street
Palo Alto, CA 94301-2009
Telephone: (650) 322-3300
Facsimile: (650) 327-9720

Attorneys for Creditor Sylvia Goetz
Perle and Angela Goetz, Successor Trustees
of The Goetz Revocable Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:)	Case No.: 05-57623-MM
)	
STEPHEN J.R. GOETZ and DIANA P. GOETZ,)	Chapter 11
)	
Debtors.)	COMPLAINT FOR
)	DETERMINATION OF
)	DISCHARGEABILITY OF DEBT
<hr/>		
SYLVIA GOETZ PERLE and ANGELA GOETZ, TRUSTEES OF THE GOETZ REVOCABLE TRUST,)	
)	
Plaintiff,)	
)	
v.)	
)	
STEPHEN J.R. GOETZ,)	
)	
Defendant.)	
<hr/>		

SYLVIA GOETZ PERLE and ANGELA GOETZ, Successor Trustees of
THE GOETZ REVOCABLE TRUST, Plaintiff herein, alleges as follows:

1. This adversary proceeding is one arising in the Debtors' Case
No. 05-57623-MM under Chapter 11 of Title 11 now pending in this Court.

1 This Court has jurisdiction over this adversary proceeding pursuant to 28
2 U.S.C. §§157 and 1334 and 11 U.S.C. §523.

3 2. This is a core proceeding over which this Court has jurisdiction
4 under Title 28 U.S.C. §157(b).

5 3. This is an adversary proceeding to determine the
6 dischargeability of a debt pursuant to 11 U.S.C. §523(a)(2) and/or (a)(4).

7 4. Sylvia Goetz Perle and Angela Goetz are successor trustees of
8 the Goetz Revocable Trust, Plaintiff herein.

9 5. Defendant is one of the Debtors in the pending Chapter 11 case.
10 Plaintiff is a creditor of Defendant.

11 6. Defendant is indebted to Plaintiff pursuant to an Arbitration
12 Award dated September 6, 2005 ("Arbitration Award") and Amended Order
13 Confirming Arbitration Award and Entry of Judgment Thereon filed October
14 4, 2005 ("Amended Order") in Sylvia Goetz Perle, et al. V. Stephen J.R. Goetz,
15 et al., Santa Clara County Superior Court, Case No. 1-01-CV-800889 ("State
16 Court Action"). Copies of the Arbitration Award and Amended Order are
17 attached hereto as Exhibits "A" and "B", respectively.

18 7. The Arbitration Award in the State Court Action is a final
19 binding award on the parties. (Arbitration Award, 1:17)

20 8. The Arbitration Award sets forth the following findings:

21 a. "Stephen Goetz acknowledged he was a fiduciary and his
22 counsel also stipulated to this at the arbitration." (Arbitration Award, 1:22-
23 23)

24 b. "Stephen Goetz' admitted willingness to make
25 misrepresentations to appraisers, to lenders, to the county, to tenants of 4906
26

1 El Camino (Exhibit 88) and even to his mother (while supposedly explaining
 2 the fairness of his transaction) (Exhibit 238) leave him with no credibility and
 3 no ability to meet his burden of proof.” (Arbitration Award, 2:3-6)

4 c. “Stephen Goetz, individually and as managing member of
 5 4906 El Camino LLC and 4906 El Camino LLC shall pay damages to the
 6 Goetz Revocable Trust based upon their actions of obtaining money and
 7 property by false representations and fraud and defalcation while acting in a
 8 fiduciary capacity. . . .” (Arbitration Award, 6:22-25)

9 9. Defendant acquired the real property located at 4906 El Camino
 10 Real, Los Altos, CA (“4906 El Camino”) from Plaintiff and/or Robert and
 11 Verena Goetz, Defendant’s parents and predecessors in interest, while acting
 12 in a fiduciary capacity.

13 10. 4906 El Camino was acquired and held by 4906 El Camino LLC,
 14 an entity controlled by Defendant.

15 11. Evidence in the State Court Action resulted in a determination
 16 by the arbitrator that the value of 4906 El Camino on December 31, 1997 was
 17 \$2,350,000 (Arbitration Award, 2:20-21); however, Defendant valued 4906 El
 18 Camino on acquisition at \$2,010,000, the amount of the existing mortgage
 19 (Arbitration Award, 4:11-12).

20 12. The State Court found that:

21 a. Defendant failed to provide Plaintiff “. . . with ‘objective’
 22 information showing that the fair market value of 4906 [El Camino] was
 23 much greater than the amount of the mortgage,” . . . [d]espite the objective
 24 evidence of third parties Michael Stoneman (the loan broker), Paul Laubach
 25 (the appraiser), and the Transatlantic Capital (the lender) available at the
 26

1 time of the transfer that the building was worth more than the amount of the
2 existing mortgage. . . .” (Arbitration Award, 3:9-14)

3 b. Defendant failed to make “. . . sure that Plaintiff and Dr.
4 Goetz [Defendant’s father] received independent advice about the value and
5 fairness of the transfer of 4906 El Camino to him.” (Arbitration Award, 3:17-
6 18)

7 c. Defendant entered “. . . into an interested transaction
8 with Plaintiff and Dr. Goetz that took all value Dr. Goetz had accumulated on
9 the property over approximately 15 years. [Defendant] received \$77,000 over
10 and above the cost of refinancing the month after the building was
11 transferred to him while Plaintiff and Dr. Robert Goetz lost their investment
12 in 4906 El Camino. . . .” (Arbitration Award, 3:25-28)

13 d. “Stephen Goetz’ entire conduct during 1997 through 2000
14 constituted fraudulent concealment of the true value of 4906 El Camino. He
15 told his father that he could get a mortgage refinance on the building even
16 though it was worth \$2,010,000. After he obtained a refinance in 1998 he
17 told his father that the building was worth no more than \$2,010,000 at the
18 transfer. Moreover the record is clear that Dr. Robert Goetz believed him and
19 was justified in relying on his son. . . . In the case of an 87-year-old father
20 relying upon his son, it is reasonable to conclude that facts that might have
21 made others inquire would not have created such doubt in the mind of the
22 principal.” (Arbitration Award, 4:10-22)

23 e. “The most compelling evidence of what Stephen Goetz’
24 parents knew and understood is the fact that Stephen Goetz’ mother sued
25 him for fraud and breach of fiduciary duty after learning the true facts.
26

Clearly this act speaks volumes as to what . . . Stephen Goetz' parents believed at the time of the transfer." (Arbitration Award, 5:1-4)

13. Plaintiff and/or its predecessors in interest reasonably relied on Defendant's false pretenses, false representations or actual fraud when 4906 El Camino was transferred to Defendant and 4906 El Camino LLC.

14. Based on the findings of fraud and defalcation while acting in a fiduciary capacity set forth in the Arbitration Award, the court's Amended Order ordered Defendant to:

- a. Immediately transfer ownership of 4906 El Camino to the Plaintiff;
- b. Pay damages to Plaintiff in the sum of \$1,067,255.10 plus post-judgment interest until paid in full;
- c. Pay costs of litigation in the amount of \$26,177.79;
- d. Transfer to Plaintiff all books, documents and records referring to any of the accounts, records, rents, deposits, property taxes, insurance, income taxes, tenants, leases, bank deposits, utilities, liens, charges or other matters referring or relating to 4906 El Camino; and
- e. Transfer the proceeds from the Camino Medical Clinic's September rent payment in the amount of \$18,591.46.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 1. For a determination by this Court that the judgment in the State Court Action in favor of Plaintiff is determined to be nondischargeable by Defendant pursuant to 11 U.S.C. §523;

1 2. For an order directing Defendant to comply with the State Court
2 judgment as follows:

3 a. Stephen Goetz, as managing member of 4906 El Camino
4 LLC and individually, shall immediately execute and deliver a Grant Deed
5 transferring 4906 El Camino from 4906 El Camino LLC to Plaintiff and to
6 take such further actions as may be necessary to complete the transfer;

7 b. Pay to Plaintiff damages in the amount of \$1,067,255.10
8 plus post-judgment interest until paid in full;

9 c. Pay to Plaintiff its costs of litigation in the State Court
10 Action in the amount of \$26,177.79;

11 d. Stephen Goetz, as managing member of 4906 El Camino
12 LLC and personally, shall transfer and deliver the following books,
13 documents and records to Plaintiff: all books, documents and records
14 referring to any of the accounts, records, rents, deposits, property taxes,
15 insurance, income taxes, tenants, leases, bank deposits, utilities, liens,
16 charges or other matters referring or relating to 4906 El Camino; and

17 e. Pay to Plaintiff \$18,591.46, representing the proceeds
18 from the Camino Medical Clinic's September rent payment.
19

20 3. For an order by this Court that the judgment in the within
21 adversary proceeding is nondischargeable.

22 4. For reasonable attorneys' fees and costs of this litigation to be
23 determined; and

24 ////

25 ////

26 ////

1 5. For such other and further relief as the Court deems just and
2 proper.

3 Dated: December 20, 2005

LAW OFFICES OF WILLIAM C. LEWIS

4 By: /s/ William C. Lewis
5 William C. Lewis
6 Attorneys for Plaintiff
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